

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE FLINT WATER LITIGATION

Case No. 5:16-cv-10444-JEL-MKM
Hon. Judith E. Levy

This Document Relates To:
Gaddy et al. v. Flint et al.
Meeks et al. v. Flint et al.

Case No. 5:17-cv-11166-JEL-MKM
Case No. 5:17-cv-11165-JEL-MKM

**DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH
AMERICA, INC., AND VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC’S RESPONSE TO THE GOVERNMENT
WITNESSES’ MOTION FOR CERTIFICATION UNDER 1292(b)**

The Flint water crisis was an “infamous government-created environmental disaster,” *Guertin v. State*, 912 F.3d 907, 915 (6th Cir. 2019). “The City of Flint and City and State officials . . . caused, sustained, and covered up” the crisis. *In re Flint Water Cases*, 969 F.3d 298, 300 (6th Cir. 2020). Many government officials have been criminally charged for their roles in the crisis.

Five of those City and State officials refuse to come to trial to testify about their conduct related to the crisis. They seek to invoke the Fifth Amendment privilege against self-incrimination. They aim to avoid having to account for themselves before this jury, despite the fact that they already have spoken extensively about many of these events—during their depositions in this case, in statements to the media, and (for some) in statements to Congress.

This Court held a hearing and fully considered the witnesses' Fifth Amendment arguments. In its March 22, 2022, order, the Court held that the witnesses waived the Fifth Amendment privilege as to the topics to which they had testified in their depositions in this case, and so the Court ordered them to testify on those topics at trial. Because that order is not appealable as of right, the witnesses have asked the Court to certify its order for interlocutory review under 28 U.S.C. § 1292(b). *See Snyder Mot.*, ECF No. 753, PageID.46738.

In VNA's view, the Court's order plainly is correct. Although there is no Sixth Circuit case directly on point, the Court applied established Supreme Court law to the facts of this case. But the witnesses have said that they will not testify at trial, *even under penalty of contempt*. Br. in Supp. of Snyder Mot. 1, ECF No. 753, PageID.46747. As the Court is aware, the witnesses' testimony will be critically important to the jury's understanding of the Flint water crisis, as these are some of the key actors who caused, prolonged, and covered up the crisis. The jury should have the opportunity to observe the witnesses on the stand to assess their credibility, VNA should have the opportunity to cross-examine the witnesses to develop their testimony, and the public should have the opportunity to see the witnesses testify live in the first public trial arising out of the Flint water crisis. Moreover, these witnesses are central to the entire trial, the purpose of which is to determine liability

and, if necessary, to assign fault for Plaintiffs' injuries among defendants and nonparties, including these witnesses.

Because it appears that the jury will not be able to hear from these critical witnesses live unless the Sixth Circuit affirms the Court's order, VNA does not oppose an order from Court certifying its order for interlocutory review. (Another option would be for the witnesses to file a petition for mandamus. *See, e.g., EEOC v. K-Mart Corp.*, 694 F.2d 1055, 1061 (6th Cir. 1982) (granting mandamus to review an important evidentiary issue).) If the Court does certify its order, VNA respectfully requests that the Court explain in its certification order the need for expeditious review.

Respectfully submitted,

**CAMPBELL, CONROY & O'NEIL
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Dated: March 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2022, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification to the ECF counsel of record.

By: /s/ James M. Campbell
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